

## CHAPTER 41 - DOMESTIC AND FAMILY VIOLENCE

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## CHAPTER 41 -- DOMESTIC AND FAMILY VIOLENCE CODE

### 41.1 TITLE, PURPOSE AND DEFINITIONS

#### A. Title

This code may be cited as the "Domestic and Family Violence Code".

#### B. Purpose

The purpose of this code is to:

1. Eliminate barriers in meeting the safety and other needs of victims, of family violence,
2. To hold batterers accountable for their actions, and
3. To enhance the provision of services to victims and their batterers.

#### C. Construction

This chapter shall be liberally construed to effect the purposes stated above and shall be interpreted to comport with the customs and traditions of this Tribe. If tribal law, customs or traditions are inconclusive in any matter arising under this chapter, then federal law and, as a last resort, the law of the State of Wisconsin, may be used for guidance.

#### D. Definitions

##### Domestic and Family Violence

1. Domestic and Family Violence includes:
  - a) Intentional infliction of physical harm to family or household member;
  - b) An act, word, gesture or any other behavior that places a family or household member in fear of imminent

physical harm;

- c) Intentional use of force, coercion, threat, intimidation, humiliation, or confinement which results in mental or emotional harm to a family or household member; or
  - d) Causing a family or household member to engage involuntarily in sexual activity by force, coercion, threat, intimidation, humiliation, confinement, or administering alcohol or drugs to the family or household member without their knowledge.
2. Imminent physical harm as used above refers to such physical harm that is close or near at hand, that is impending, perilous, or on the point of happening. It does not require that such physical harm may be immediate or without delay after the behavior that places the victim in fear.

**Family or household member**

1. Family or household member includes:
- a) Adults and/or minors who are current or former spouses;
  - b) Adults and/or minors who have children, including an unborn child, in common;
  - c) Adults and/or minors who are living together or have lived together and who have engaged in a sexual relationship;
  - d) Adults and/or minors who are involved in a sexual or otherwise intimate, ongoing relationship including persons who are identified in the community as boyfriend and girlfriend; and
  - e) Adult relatives who are living together or who have lived together.

### **Exclusions**

1. Domestic and family violence in the parent-minor child relationship is not covered in this Code. The occurrence of domestic and family violence in that relationship is covered in Chapter 26 -- Red Cliff Children's Code.

## **41.2**

### **JURISDICTION & CIVIL NATURE OF THIS CODE**

#### **A. Jurisdiction & Authority to Enact this Code**

This Code is adopted pursuant to The Red Cliff Constitution, Act 6, and pursuant to an exercise of this Tribe's inherent sovereign authority.

#### **B. Jurisdiction of the Court & Civil Nature of This Code**

The jurisdiction of the Tribal Court shall be civil in nature and shall include all orders necessary to insure the purposes and provisions of this Code are put into effect. This includes the power to enforce subpoenas, orders of contempt, and any other orders as appropriate.

#### **C. Availability of Criminal Penalties**

The provisions of this Code do not replace the criminal penalties and procedures available under state law for an act of domestic and/or family violence.

## **41.3**

### **CIVIL ORDERS FOR PROTECTION**

#### **A. Who May Petition the Court**

1. A person who is subject to the jurisdiction of the Tribe's Court and who has been a victim of domestic and family violence may file a Petition for an Order

for Protection against a family or household member who commits an act of domestic and family violence.

2. A parent, guardian, or other representative may file a Petition for an Order for Protection on behalf of a minor victim against the family or household member who commits an act of domestic violence.
3. No filing fee, bond, or other payment shall be required from the victim for the filing of a Petition for an Order for Protection under this Code.

**B. Contents of the Petition**

1. The Petition shall include membership status or any other information necessary to establish jurisdiction of the Court; the Petitioner's name and address at the time of the incident of domestic and family violence; the name, address, and relationship of the family or household member who is the Respondent; a description of the specific facts and circumstances justifying the relief requested; the relief requested; and the current location of the Respondent, if known.
2. The current location of the Petitioner shall not be released by the Court except on Petitioner's written request.
3. The Petition shall also state the nature of any other legal matter pending regarding the Petitioner or the Respondent; for example, criminal charges, child protection proceeding, and divorce.
4. The Court shall arrange for law enforcement to be present at all domestic and family violence hearings.

**C. Duty of Court Personnel to Provide Forms & Clerical Assistance**

1. The Clerk of Court or other designated person shall provide to a person requesting an Order for Protection;
  - a) A standard Petition form with instructions for completion,
  - b) All other forms required to petition for an Order for Protection, such as those needed for service of process,
  - c) Clerical assistance in filling out the forms and filing the Petition for an Order for Protection, and
  - d) Provide written notice to the victim identifying the nearest available provider of shelter and advocacy services.
2. In order to facilitate enforcement under full faith and credit provisions of state law, the Clerk of Court or other designated person shall send an authenticated copy of the Emergency Order for Protection and the Order for Protection to the circuit court clerk for the county where the Respondent is located within one business day of the issuance of the Order.

**D. Emergency Orders for Protection**

1. The Court shall immediately grant and ex-parte Emergency Order for Protection if, based on the specific facts stated in the Petition, there are reasonable grounds to believe that the Petitioner is in danger of domestic and family violence occurring prior to a hearing on the Petition.

An allegation of a recent incident of domestic and family violence constitutes reasonable grounds to believe the Petitioner is in danger.

2. The Emergency Order for Protection may include the following relief:
  - a) Prohibit the Respondent from committing or threatening to commit acts of domestic and family violence against Petitioner and the Petitioner's family and household members;
  - b) Prohibiting the Respondent from contacting or communicating with Petitioner directly or indirectly;
  - c) Removing and excluding Respondent from the Petitioner's residence, regardless of ownership;
  - d) Removing and excluding the Respondent from the Petitioner's place of employment and other locations frequented by Petitioner; and
  - e) Such other relief as the Court deems necessary to protect and provide for the safety of the Petitioner and any designated family or household member.
3. The Emergency Order for Protection shall be served with the notice of hearing on the Respondent and shall expire at the time of the hearing.

**E. Notice to Respondent & Other Interested Parties**

1. Respondent shall be served a notice of hearing along with a copy of the Petition

and a copy of any Emergency Order for Protection at least forty-eight hours prior to the time of the hearing.

**F. Hearing**

1. The Court shall hold a hearing on the Petition for an Order for Protection within seven (7) days of the filing date of the Petition.
2. The Court may extend the time for a hearing once for up to fourteen (14) days upon consent of the parties or upon finding that Respondent has not been timely served a notice of hearing.

**G. Remedies Available in an Order for Protection**

1. The Court may grant the following relief in an Order for Protection whether or not the Respondent appears:
  - a) Prohibit the Respondent from threatening to commit or committing acts of domestic or family violence against the Petitioner;
  - b) Prohibit the Respondent from harassing, telephoning, contacting, or otherwise communicating with the Petitioner directly or indirectly, or through others;
  - c) Remove and exclude Respondent from Petitioner's residence, or if Respondent owns or leases the residence and the Petitioner has no legal interest in the residence, then the Court may order the Respondent to avoid the residence for a reasonable length of time until the Petitioner relocates;
  - d) Remove and exclude Respondent from any Petitioner's place of employment at any time Petitioner is present;



- e) Remove and exclude Respondent from other specified locations frequented by the Petitioner;
- f) Remove and exclude Respondent from specified public social events and activities;
- g) Limit or prohibit contact with minor children of Respondent where necessary to protect the safety of the Petitioner or child(ren);
- h) Refer minors who are family or household members for assessments and services through the Indian Child Welfare office, mental health program, or other tribal or non-tribal program;
- i) Require Respondent to participate in alcohol and/or other assessments, and to participate in treatment where the treatment program meets the State of Wisconsin's batterer's treatment standards;
- j) Limit or prohibit Respondent from using or possessing a firearm or other weapon as specified by the Court;
- k) Require Respondent to reimburse the Petitioner or any other person for any expenses associated with the domestic or family violence, including but not limited to medical expenses, counseling, shelter, and repair or replacement of damaged property;
- l) Require Respondent participate in community service, such as cutting wood or providing other services for

elderly members of the Tribe;

- m) Require that the Respondent's act(s) of domestic and/or family violence be publicly posted; and,
  - n) Such other relief as the Court deems necessary to protect and provide for the safety of the Petitioner and any designated family or household member.
- 2. An Order for Protection shall not contain any provisions which impose requirements on a victim of domestic or family violence. The Court may recommend services for the victim and shall verify that the victim is aware of locally available shelter facilities.
  - 3. The Court shall cause the Order for Protection to be delivered for service of process; make reasonable efforts to ensure that the Order is understood by the Petitioner, and Respondent if present at the hearing; and transmit a copy of the Order for Protection to the local law enforcement agency or agencies within one business day after the Order is issued.
  - 4. The Court shall not grant a mutual Order for Protection to opposing parties unless the Respondent has filed a Petition for the Court to act upon and the Court has found cause to issue such Order.
  - 5. The Court shall not deny a Petitioner the relief requested solely because of a lapse of time between an act of domestic or family violence and the filing of the Petition.

**H. Duration, Extension, and Modification of Orders for Protection**

1. An Order for Protection or a modification of an Order for Protection is effective until further order of the Court.
2. An Order for Protection may be modified or withdrawn following notice and hearing, on the Court's own motion or upon the request of either Petitioner or Respondent if;
  - a) Assessments or treatments ordered by the court have been completed,
  - b) Respondent demonstrates behavioral changes which eliminate the risk of a recurrence of acts of domestic and family violence as verified by treatment providers or other independent sources identified by the Court, or;
  - c) The Court determines the safety needs of the Petitioner and other family or household members are provided for by the modification or withdrawal of the Order for Protection.
3. If Respondent is excluded from Petitioner's residence or ordered to stay away from Petitioner, an invitation by the Petitioner to enter the residence does not waive or nullify an Order for Protection.

**I. Enforcement and Penalties for Violation**

Where Respondent has violated an Order for Protection, the Court may order additional and other remedies as provided in this Chapter 41 section 41.3(G). The Court may also impose such other penalty as deemed necessary given the severity of the violation of the Order for Protection. Penalties include, but are not limited to those available for contempt, additional civil forfeitures, assessments of court costs and fees, and exclusion from public buildings within the boundaries of the

Red Cliff Reservation.

**J. Full Faith & Credit**

1. Any order for Protection that is consistent with this Chapter by the Court or another Tribal Court or State Court shall be afforded full faith and credit by the Red Cliff Tribal Court and enforced as if it were an Order for Protection issued by the Red Cliff Tribal Court.
2. An Order for Protection issued by another Tribal Court or State Court is consistent with this Chapter if:
  - a) The issuing Court has jurisdiction over the parties and subject matter; and,
  - b) Reasonable notice and opportunity to be heard is given to the Respondent, sufficient to protect the person's right of due process; and/or,
  - c) In the event of an ex parte Order for Protection, notice and opportunity to be heard must be provided within the time required by the issuing Court's law, and in any event within a reasonable time after the order is issued, sufficient to protect the Respondent's due process rights.
3. An Order for Protection issued by another Court of competent jurisdiction against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if:

- a) No cross or counter petition, complaint, or other written pleading was filed seeking an Order for Protection; or,
- b) A cross or counter petition has been filed and the Court did not make specific findings that each party was entitled to an Order for Protection.

#### **41.4      INTERVENTION AND REFERRALS**

##### **A.      Confidentiality for Victims**

- 1. No volunteer or employee of a program for victims of domestic abuse may disclose the content of oral communication, written records or reports concerning the victim unless given written permission by the victim. The waiver of confidentiality must specifically state what information may be disclosed, to whom the information may be disclosed, and the purpose the information may be disclosed. Such a waiver is not valid after thirty (30) days or immediately after the victim revokes the waiver.
- 2. A violation of this privilege will be treated as Contempt of Court and is punishable by a civil forfeiture not to exceed \$5,000.00 and such other penalty the Court deems just and proper.
- 3. This privileged communication does not relieve a person from the duty to report child abuse or neglect or from providing evidence about child abuse or neglect in Tribal Court proceedings pursuant to Chapter 26 of this Red Cliff Code of Laws or State Court proceedings pursuant to Chapters 48 and 938 as they exist or are changed from time to time.

4. These provisions of confidentiality for victims shall not prevent the disclosure of information compiled about incidents of domestic and family violence which protects the identity of the victim and family or household members of the victim.

**B. Intervention for Batterers**

1. Where services are provided for batterers pursuant to an Order for Protection, the batterer who is ordered into the program shall be required by the Court to sign the following releases:
  - (a) Allowing the service provider to inform the victim and/or the victim's advocate whether the batterer is in compliance with the Order for Protection, and to report to the victim, the family, or household members of the victim when their safety is at risk.
  - b) Allowing prior and other current treating agencies to provide information about the batterer to the service provider; and
  - c) Allowing the service provider to provide information about the batterer to relevant legal entities including but not limited to the Red Cliff Tribal Court, other courts with an identifiable interest, parole and probation officers, and child protective services.

**C. Other Policies**

Written policies and procedures developed pursuant to this chapter may include requiring tribal programs and other entities within the jurisdiction of the Tribe to provide information about the rights of victims and about remedies and services available, may set standards for service providers concerning domestic and family violence, and may establish protocols for intervention and referrals for services for suspected victims or batterers, and their family and household members.

**41.5 SEVERABILITY**

If any part or parts, or the application of any part of this chapter is held invalid, such holding shall not affect the validity of the remaining parts of this chapter. The Red Cliff Tribal Council hereby declares that it would have passed the remaining parts of this chapter even if it had known that such part or parts, or the application of any part, would be declared invalid.